



Billing Code 3410-10

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 6

RIN 0551-AA82

Dairy Tariff-Rate Import Quota Licensing Program

AGENCY: Foreign Agricultural Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulation that provides for the issuance of licenses to import certain dairy articles under tariff-rate quotas (TRQs) as set forth in the Harmonized Tariff Schedule of the United States. The three most significant changes to the rule would be to suspend for an additional seven years, the historical license reduction provision, which currently expires with the beginning of quota year 2016; to modify procedures for collecting licensing fees in order to better align the fee collection to the costs of administering the program; and to exclusively use electronic communications in the application, reporting and payment processes. The expected outcome from the implementation of the proposed changes would be to allow license holders to adjust to changing market conditions impacting the dairy sector; increase the Department's ability to more closely align cost recovery with the actual costs of administering the program; and allow the Department to reduce lag times, minimize paper files, and increase the efficiency of the program operations.

DATES: Submit comments on this proposed rule on or before [insert 60 days after date of publication in the Federal Register.].

ADDRESSES: Comments should include the Regulation Identifier Number (RIN) and volume, date, and page number of this issue of the Federal Register. You may submit comments by any of the following methods:

Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Mail, hand delivery, or courier: Abdelsalam El-Farra, Agricultural Marketing Specialist, Sugar and Dairy Branch, Import Programs and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, Room 5526, 1400 Independence Avenue SW., Washington, DC 20250–1021, (202) 720–9439; fax (202) 720–0876; dairy_ils@fas.usda.gov.

Comments will be available for inspection online at www.regulations.gov and at the mail address listed above between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Abdelsalam El-Farra, Agricultural Marketing Specialist, Sugar and Dairy Branch, Import Programs and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, (202) 720–9439; fax (202) 720–0876; dairy_ils@fas.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The proposed rule has been determined to be not significant under E.O. 12866 and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act ensures that regulatory and information requirements are tailored to the size and nature of small businesses, small organizations, and small governmental

jurisdictions. This proposed rule will not have a significant economic impact on small businesses participating in the program.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988. The provisions of this proposed rule would not have a preemptive effect with respect to any State or local laws, regulations, or policies which conflict with such provision or which otherwise impede their full implementation. The proposed rule would not have a retroactive effect. Before any judicial action may be brought forward regarding this proposed rule, all administrative remedies must be exhausted.

National Environmental Policy Act

The Administrator has determined that this action will not have a significant effect on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this rule.

Unfunded Mandates Reform Act (Pub. L. 104–4)

Public Law 104–4 requires consultation with state and local officials and Indian tribal governments. This proposed rule does not impose an unfunded mandate or any other requirement on state, local, or tribal governments. Accordingly, these programs are not subject to the provisions of the Unfunded Mandates Reform Act.

Executive Order 12630

This Executive Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This rule does not interfere with any property rights and, therefore, does not need to be evaluated on the basis of the criteria outlined in Executive Order 12630.

Government Paperwork Elimination Act

The United States Department of Agriculture (USDA) is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Background

The Foreign Agricultural Service (FAS), under a delegation of authority from the Secretary of Agriculture, administers the Dairy Tariff-Rate Import Quota Licensing regulation codified at 7 CFR 6.20 through 6.37 that provides for the issuance of licenses to import certain dairy articles under tariff-rate quotas (TRQs) as set forth in certain notes in Chapter 4 of the Harmonized Tariff Schedule of the United States. These dairy articles may only be entered into the United States at the low-tier tariff by or for the account of a person, as defined in the regulation, to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation. Licenses are issued on a calendar year basis, and each license authorizes the licensee to import a specified quantity and type of dairy article from a specified country of origin.

Under TRQs, a low tariff rate, commonly referred to as the in-quota rate, applies to imports up to a specified quantity. A higher tariff rate, commonly referred to as the over-quota rate, applies to any imports in excess of that amount. No license is required to import products at the over-quota tariff rate.

USDA issues three types of licenses: historical, nonhistorical (lottery), and designated. For all three license types, the current regulation provides that persons must apply each year between September 1 and October 15. Historical and designated licensees may apply for lottery

licenses, subject to certain limitations, if they are affiliated or associated with another company holding a license for that same item from the same country of origin. Licensees may fail to qualify for a license for a specific item from a specific country in the following year, if they do not meet certain requirements. Licensees must (i) apply for the license each year, (ii) pay an annual fee, and (iii) have imported at least 85 percent of the final license amount from the previous year. To avoid ineligibility due to the 85 percent rule, licensees may surrender up to 100 percent of the license, but must import 85 percent of any quantity not surrendered. Section 6.25(b)(1)(i) of the regulation currently provides that beginning with the 2016 quota year, any historical licensee who surrenders more than 50 percent of the license amount for the same item from the same country during at least three of the most recent five years will be issued a license thereafter in an amount equal to the average amount imported under that license for those five quota years.

This proposed rule would provide historical license holders additional time to adjust to changing market conditions by suspending the § 6.25(b)(1)(i) provision through the end of quota year 2022. The proposed rule would provide that reporting, payment, and application for licenses be made only by electronic submission in order to reduce the use of paper and streamline operations. Additionally, the rule proposes to modify procedures for collecting licensing fees in order to better align the fee collection with the costs of administering the program.

The current regulations allow applicants to apply for a license, generating administrative costs for the USDA, and then choose not to pay for the license, thus resulting in non-recovered administrative expenses. The proposed rule would impose financial consequences for such non-payment, which should increase USDA's ability to recover program expenses.

The proposed rule does not make any modifications to the appendices to this subpart.

Discussion of Comments

On February 6, 2013, USDA published in the Federal Register (78 FR 8434) an advanced notice of proposed rulemaking (ANPR) soliciting comment on all aspects of the current dairy import licensing rule. Specifically, USDA invited comment on the following questions: (1) Does the historical and nonhistorical license system still serve a purpose? (2) Should any provisions of the current regulation be modified in light of significant advances in technology and telecommunications? (3) Should methods be developed for issuing licenses that would increase competition among importers? (4) Should licenses be auctioned or issued on another basis? (5) Should § 6.25(b)(1)(i) regarding historical license reductions be eliminated, revised, or indefinitely suspended? (6) Should the basis upon which license fees are assessed be changed from the current flat-fee per license? (7) Should the deadlines for the surrender and reallocation of licenses in § 6.26 be changed to allow earlier reallocations? USDA received comments from 46 respondents, all of whom hold licenses and receive an economic benefit from the program or represent license holders who benefit from the program. The 46 respondents consisted of: 33 private importers; 7 associations; 3 foreign governments; and 3 other private concerns with vested interests in the outcome of the regulation review.

Many of the comments were general in nature, focusing on the following three themes: support for the current program, administrative management of the program, and the allocation of licenses. Below is a summary of their comments by respondents who addressed the seven specific questions posed in the ANPR including the relevant section number in the current rule where applicable.

Does the historical and nonhistorical license system still serve a purpose? (§§ 6.20 through 6.23)

Of the 39 respondents who commented on this issue, 32 supported continuation of a license system. Respondents claimed that the system supports the importer's ability to develop distribution networks; ensures adequate food safety; allows the license holder to foster investment in distribution systems, brand identity and marketing; and supports consumer choice, competition and the development of domestic artisan products. Seven respondents commented that the system no longer served any purpose, stating that the system increases the difficulty of obtaining licenses by new entrants; supports a growing concentration of historical license in fewer hands; and adds additional costs and burdens; and acts as an impediment to free trade. One respondent proposed abolishing the license systems. A quota-holding foreign government proposed revisions such as: combining all three licenses types; allowing the exporting nation to manage its quotas; implementing a first-come-first-serve system for eligible importers; phasing out the category of nonhistorical licenses in favor of designated licenses; and combining historical and designated licenses into a single category.

Upon consideration of all comments supporting and opposing the current licensing system, no changes to the fundamental structure of the licensing system are proposed at this time.

Should any provisions of the current regulation be modified in light of significant advances in technology and telecommunications? (§§ 6.24 through 6.26; §§ 6.32 through 6.34)

Of the 21 respondents who commented on this issue, 16 favored technological improvements that would allow the streamlining of the application process and improved

administrative processes that would allow an earlier reallocation. Five respondents opposed to modifying the current regulation cite the success of the current program as it is.

The Department recognizes the desire for a more technologically advanced and streamlined reporting system for administering licenses, reallocations, surrenders, applications, reporting and payment of fees. The Department is currently working to implement the February 19, 2014 Executive Order -- Streamlining the Export/Import Process for America's Businesses - calling for the completion of the International Trade Data System (ITDS) by December 2016. The USDA, Foreign Agricultural Service, is mandated to be a Participating Government Agency (PGA) of the Automated Commercial Exchange (ACE) project of the International Trade Data System. Over the next two years, the Department will be required to re-program and update the dairy import licensing computer systems, in order to comply with the Federal Government's Single Window Initiative for all trade agencies. The Department will be making fundamental changes to the computer systems, which will take several years to accomplish. Without these structural changes to the underlying computer systems, required as part of the ITDS project, USDA would not be able to implement most of the other changes proposed in the comments, such as changing the dates by which fees are due or by which reallocation of licenses may be issued. At an appropriate time and once the computer systems have been moved to the ACE platform, the Department will again request comments for additional improvements and changes to the program.

The Department proposes moving to strictly electronic communications in the application, reporting and payment processes to streamline operations, reduce the need for paper and to increase the efficiency of the program. The proposed change toward greater electronic submissions in the application, allocation, reporting and payment process will allow

USDA to reduce lag-times, minimize paper files, streamline operations and increase the efficiency of the program operations.

Should methods be developed for issuing licenses that would increase competition among importers? (§ 6.25)

Of the 21 respondents who commented on this issue, 15 opposed increasing competition among importers, citing that the most significant competition comes from other premium cheeses and that increasing competition among importers would weaken the system and reduce the incentive to invest in the necessary marketing, distribution network, and food safety. The six respondents favoring increased competition were divided in their approach. One proposed to eliminate the licensing system altogether; another proposed implementing a first-come-first-served system; and one proposed to combine categories, giving greater influence over the quotas to the foreign countries.

At this time, the Department does not propose any changes that directly alter the level of competition among importers.

Should licenses be auctioned or issued on another basis? (§ 6.25)

Of the 33 respondents who commented on this issue, none supported auctioning licenses. The two associations and foreign government that responded to this question commented that auctioning licenses would lead to a decrease in the fill rates. The Department does not propose any change to the existing basis for issuing licenses.

Should § 6.25(b)(1)(i.) regarding the historical license reduction provision, be eliminated, revised, or indefinitely suspended? (§ 6.25)

Of the 39 respondents who commented on this issue, 37 were license holders or associations who supported the elimination of § 6.25(b)(1)(i). A common theme of these comments was that market forces outside their control have prevented them from importing the volumes required to prevent license reductions, and they believe they should not be penalized for market forces beyond their control. Thirty-three respondents stated that § 6.25(b)(1)(i) threatens their business of importing specialty cheeses. One respondent supported changing the basis for this provision to 50 percent of the overall TRQ fill rate; in other words, if a licensee's fill rate was above the industry average fill rate, no license reduction would occur.

The Department previously suspended § 6.25(b) three times: in 1999 for five years, in 2008 for two years, and in 2010 for five more years. The association representing historical licensees argues that the use of the term "suspend" is not appropriate. They argue that once the suspension period is over and the provision comes back into force, the previous five years are used as a basis for calculating historical license amounts, *i.e.*, tracking is not suspended. Nonetheless the Department will continue to use the term "suspension," because even though tracking occurs, the license reductions themselves are suspended.

The two respondents commenting in favor of maintaining § 6.25(b)(1)(i) cite the benefits of moving TRQ amounts from the historical to the lottery category, where it is available to other applicants. They stated that historical licenses have become increasingly concentrated in fewer companies, and claim that it is increasingly difficult for new companies to enter the dairy importing business due to the difficulty of obtaining licenses. One respondent questioned why

only certain importers should have access to historical licenses while others are effectively barred from holding such licenses, many of which were issued in the 1950s.

Significant market changes have occurred in the U.S. and global dairy markets in the past five years. The United States has been transformed from being a net importer of dairy products to being a large net exporter. Many of the unfilled licenses are types of cheese for which demand has diminished or for which U.S. production has increased, leading to reduced import demand. There have been policy changes in major dairy exporting countries, in some cases reducing export supply. For the majority of dairy products subject to significant historical license reductions in recent years, if they had been in force, a transfer of the license from the historical to the lottery category would not have resulted in an increased TRQ fill rate.

Nonetheless, the basic concept of the historical license reduction provision- that some mechanism be in place to provide for at least the potential movement of license from the historical to the lottery category- serves a public purpose. Therefore, the Department believes that this provision needs to be retained. However, to allow more time for adjustments to these new market conditions, the Department proposes suspending the § 6.25(b)(1)(i) provision for an additional seven years, through the 2022 quota year, and the provision would come back into effect for 2023.

Should the basis upon which license fees are assessed be changed from the current flat-fee per license?

Of the 15 respondents who commented on this issue, eight commented that the current flat fee system is adequate, simple, and straightforward, while seven respondents supported a

change. Those supporting a change cited an issue of equity, preferring to charge a fee based on the size of the licenses.

The basis for the fee is to recover the costs of administering the dairy licensing program. The cost of administering each license is the same, whether the license quantity is small or large. Therefore, the Department will retain keeping the same fee for each license. Under the current regulation, eligible parties can request and be awarded a license and then decide not to pay for it, thus forfeiting the license. The administrative costs are incurred during the application, eligibility determination, and allocation process, as well as in administering the license after it is issued. Therefore, the Department proposes to require payment of the fee for each license requested and awarded, instead of the current system where the fee can be avoided if the license is returned. To ensure compliance with this provision, an applicant who fails to pay all fees for all licenses requested and awarded will forfeit all licenses.

Should the deadlines for the surrender and reallocation of licenses in section 6.26 be changed to allow earlier reallocations?

Of the 21 respondents who commented on this issue, 19 supported an early as possible surrender and reallocation date, citing that more time is needed to make the commercial arrangements necessary to utilize the reallocated quantities. The other two respondents found the current timeline adequate.

The Department seriously considered many options for changing the dates for surrender and reallocation, but given the interaction of the surrender and reallocation process with other timelines, such as for fee payments, it is not feasible to accommodate an earlier surrender and

reallocation period within the current reporting system. The Department will make no modification to deadlines for the surrender and allocation process.

Summary of Proposed Changes to Rule

The following is a summary of the proposed substantive changes to the current regulation:

The name of the program has been corrected throughout the document to read “Dairy Tariff-Rate Quota Import Licensing.”

References to the process used for the initial allocation of licenses, which took place based on the 1997 quota year, have been removed throughout this proposed rule due to the fact that current allocations are now based on the preceding quota year. References to the 1997 quota year allocations are removed from the following sections: §§ 6.20(b), 6.23(b)(2), 6.23(b)(3), 6.23(b)(4), 6.23(b)(5), 6.25(a)(1), 6.25(a)(2), 6.25(a)(3), and 6.26(f).

Section 6.21 Definitions has been updated to include several modifications. The definition of “Article other than cheese or cheese products” now specifies that the article is a dairy product. The definition of “EC” no longer lists the current members, because new members may be added at any time. Therefore, the definition of “EC” is defined to be those countries listed in Additional U.S. Note 2 to Chapter 4 of the Harmonized Tariff Schedule, because this is published annually and maintained current. “Customs” has been replaced throughout the proposed rule with “CBP” which stands for Customs and Border Protection. The definition of “Licensing Authority” removes reference to a specific USDA division. The definition of “Other Countries” deletes the reference to the Harmonized Tariff Schedule. The definition of “Postmark” is deleted from this section, given that physical mail will no longer be

accepted. This proposed rule would require that all communications, applications, reporting and payment will be made electronically as designated by the Licensing Authority. Therefore, references to physical mail, postmarks, mailing addresses, or physical locations have been deleted throughout the rule. The references to physical mail delivery that have been deleted are found in the following sections: §§ 6.24(a), 6.24(b)(1), 6.24(c), 6.25(d)(1), 6.26(a), 6.26(c), 6.28(b), 6.33(b), 6.33(c), 6.35(b), and 6.36(b). Additionally, a valid email address is now being required for eligibility. The requirement for an email address has been added to § 6.23(a)(3).

Section 6.22(b) was deleted from the rule because these references to General Note 15 provisions of the HTS are not covered, nor in any way affected, by the dairy import licensing program.

Section 6.24(c) was deleted because it primarily applied to mailed hardcopy applications. The information submitted through the current electronic application system obviates the need for submitting this additional information.

Section 6.25(a)(1) through (3) was deleted because the historic allocation process is no longer relevant. New quota year allocations are made based on the preceding year's allocations and usage.

Section 6.25(b)(1)(i) extends the date of the suspension of the historical licenses reduction provision for an additional seven years, expiring with the beginning of quota year 2023.

Section 6.25(d)(1)(ii) requires, for Appendix 3 allocations, that countries designate the allocations of specific articles to importers in kilograms. This requirement will reduce any disputes arising from converting percentages into weights.

Section 6.26(c) was rewritten to clarify the surrender and allocation process for persons who were issued an import license for a cheese or cheese product article versus a person who was issued an import license for an article other than cheese or cheese products.

Section 6.28(b) requires that all license holders who intend to convey their business and are requesting USDA to transfer a license, submit the required documentation by email. The option to send documents via physical mail or courier is no longer available.

Section 6.33(b) tightens the timeline for making payments and requires payment in full within 10 days from the date of the issuance of the license, rather than the current 30 day period. This change would allow USDA to accelerate some of its administrative functions of operating the licensing program because the use of electronic payment does not require the longer lag time necessary for processing paper checks.

Section 6.33(c) requires that an applicant who applies for and is issued a license pay for all licenses issued, or a hold will be placed on all licenses of such applicant. If after receiving a warning letter via email from the Licensing Authority, the applicant does not pay in full within 10 days for all licenses issued , then all licenses issued to the licensee, paid or unpaid, will be revoked.

Section 6.33(d) is deleted pursuant to the previous clause (§ 6.33(c)) and no longer permits licensees not to accept or pay for certain licenses issued to them. The cost of administering the licensing program is incurred by USDA during the application and allocation process; therefore, applicants will be required to pay for licenses issued in accordance with § 6.33(c) or have all licenses revoked.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Dairy, Cheese, Imports, Procedural rules, Application requirements, Tariff-rate Quota, Reporting and recordkeeping requirements.

Accordingly, for reasons described in the preamble, 7 CFR part 6 is proposed to be amended as follows:

PART 6—IMPORT QUOTAS AND FEES

Subpart—Dairy Tariff-Rate Quota Import Licensing

1. The authority citation for Subpart—Dairy Tariff-Rate Quota Import Licensing continues to read as follows:

Authority: Additional U.S. Notes 6, 7, 8, 12, 14, 16-23 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97-258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103-465, 108 Stat. 4819 (19 U.S.C. 3513 and 3601).

2. The heading for “Subpart—Dairy Tariff-Rate Import Quota Licensing” is revised to read as set forth above.

3. Sections 6.20 through 6.36 are revised to read as follows:

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6.20 Introduction.

6.21 Definitions.

6.22 Requirement for a license.

6.23 Eligibility to apply for a license.

6.24 Application for a license.

6.25 Allocation of licenses.

- 6.26 Surrender and reallocation.
- 6.27 Limitations on use of license.
- 6.28 Transfer of license.
- 6.29 Use of licenses.
- 6.30 Record maintenance and inspection.
- 6.31 Debarment and suspension.
- 6.32 Globalization of licenses.
- 6.33 License fee.
- 6.34 Adjustment of appendices.
- 6.35 Correction of errors.
- 6.36 Miscellaneous.

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§ 6.20 Introduction.

(a) Presidential Proclamation 6763 of December 23, 1994, modified the Harmonized Tariff Schedule of the United States affecting the import regime for certain articles of dairy products. The Proclamation terminated quantitative restrictions that had been imposed pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624); proclaimed tariff-rate quotas for such articles pursuant to Pub. L. 103-465; and specified which of such articles may be entered only by or for the account of a person to whom a license has been issued by the Secretary of Agriculture.

(b) Effective January 1, 1995, the prior regime of absolute quotas for certain dairy products was replaced by a system of tariff-rate quotas. The articles subject to licensing under the tariff-rate quotas are listed in Appendices 1, 2, and 3 of this subpart. Licenses permit the holder to import

specified quantities of the subject articles into the United States at the applicable in-quota rate of duty. If an importer has no license for an article subject to licensing, such importer will, with certain exceptions, be required to pay the applicable over-quota rate of duty.

(c) The Secretary of Agriculture has determined that this subpart will, to the fullest extent practicable, result in fair and equitable allocation of the right to import articles subject to such tariff-rate quotas. The subpart will also maximize utilization of the tariff-rate quotas for such articles, taking due account of any special factors which may have affected or may be affecting the trade in the articles concerned.

§ 6.21 Definitions.

As used in this subpart and the appendices thereto, the following terms are defined as follows:

Article. One of the products listed in Appendices 1, 2, or 3, which are the same as those described in Additional U.S. Notes 6, 7, 8, 12, 14, 16-23 and 25 to Chapter 4 of the Harmonized Tariff Schedule.

Article other than cheese or cheese products. Any article that is a dairy product, but not a cheese or cheese product.

CBP. United States Customs and Border Protection, U.S. Department of Homeland Security.

Cheese or cheese products. Articles in headings 0406, 1901.90.34, and 1901.90.36 of the Harmonized Tariff Schedule.

Commercial entry. Any entry except those made by or for the account of the United States Government or for a foreign government, for the personal use of the importer or for sampling, taking orders, research, or the testing of equipment.

Country. Country of origin as determined in accordance with CBP rules and regulations, except that “EC”, and “Other countries” shall each be treated as a country.

Dairy products. Articles in headings 0401 through 0406, margarine cheese listed under headings 1901.90.34 and 1901.90.36, ice cream listed under heading 2105, and casein listed under heading 3501 of the Harmonized Tariff Schedule.

Department. The United States Department of Agriculture.

EC. Those countries listed in Additional U.S. Note 2 to Chapter 4 of the Harmonized Tariff Schedule.

Enter or Entry. To make or making entry for consumption, or withdrawal from warehouse for consumption in accordance with CBP regulations and procedures.

Harmonized Tariff Schedule or HTS. The Harmonized Tariff Schedule of the United States.

Licensee. A person to whom a license has been issued under this subpart.

Licensing Authority. Any officer or employee of the U.S. Department of Agriculture designated to act in this position by the Director of the Division charged with managing the Dairy Tariff-Rate Quota Import Licensing System.

Other countries. Countries not listed by name as having separate tariff-rate quota allocations for an article.

Person. An individual, firm, corporation, partnership, association, trust, estate or other legal entity.

Process or processing. Any additional preparation of a dairy product, such as melting, grating, shredding, cutting and wrapping, or blending with any additional ingredient.

Quota year. The 12-month period beginning on January 1 of a given year.

Tariff-rate quota amount or TRQ amount. The amount of an article subject to the applicable in-quota rate of duty established under a tariff-rate quota.

United States. The customs territory of the United States, which is limited to the 50 states, the District of Columbia, and Puerto Rico.

§ 6.22 Requirement for a license.

A person who seeks to enter, or cause to be entered an article as a commercial entry, shall obtain a license, in accordance with this subpart.

§ 6.23 Eligibility to apply for a license.

(a) In general. To apply for any license, a person shall have:

- (1) A business office, and be doing business, in the United States, and
- (2) An agent in the United States for service of process, and
- (3) An email address to be used for correspondence regarding licensing activities and reports.

The licensee shall at all times maintain a valid email address with the Licensing Authority.

(b) Eligibility for 2014 and subsequent quota years. (1) Historical licenses (Appendix 1). A person issued a historical license for an article for the current quota year may apply for a historical license (Appendix 1) for the next quota year for the same article from the same

country, if such person was, during the 12-month period ending August 31 prior to the quota year, either:

(i) Where the article is cheese or cheese product,

(A) The owner of and importer of record for at least three separate commercial entries of cheese or cheese products totaling not less than 57,000 kilograms net weight, each of the three entries not less than 2,000 kilograms net weight;

(B) The owner of and importer of record for at least eight separate commercial entries of cheese or cheese products, from at least eight separate shipments, totaling not less than 19,000 kilograms net weight, each of the eight entries not less than 450 kilograms net weight, with a minimum of two entries in each of at least three quarters during that period; or

(C) The owner or operator of a plant listed in Section II or listed in Section I as a processor of cheese of the most current issue of “Dairy Plants Surveyed and Approved for USDA Grading Service” and had processed or packaged at least 450,000 kilograms of cheese or cheese products in its own plant in the United States; or

(ii) Where the article is not cheese or cheese product,

(A) The owner of and importer of record for at least three separate commercial entries of dairy products totaling not less than 57,000 kilograms net weight, each of the three entries not less than 2,000 kilograms net weight;

(B) The owner of and importer of record for at least eight separate commercial entries of dairy products, from at least eight separate shipments, totaling not less than 19,000 kilograms net

weight, each of the eight entries not less than 450 kilograms net weight, with a minimum of two entries in each of at least three quarters during that period;

(C) The owner or operator of a plant listed in the most current issue of “Dairy Plants Surveyed and Approved for USDA Grading Service” and had manufactured, processed or packaged at least 450,000 kilograms of dairy products in its own plant in the United States; or

(D) The exporter of dairy products in the quantities and number of shipments required under (A) or (B) above.

(2) Nonhistorical licenses for cheese or cheese products (Appendix 2). A person may annually apply for a nonhistorical license for cheese or cheese products (Appendix 2) if such person meets the requirements of paragraph (b)(1)(i) of this section.

(3) Nonhistorical licenses for articles other than cheese or cheese products (Appendix 2). A person may annually apply for a nonhistorical license for articles other than cheese or cheese products (Appendix 2) if such person meets the requirements of paragraph (b)(1)(ii) of this section.

(4) Designated license (Appendix 3). A designated license may be issued to a person who has applied for a license, has met the requirements of paragraph (b)(1)(i) of this section, and is designated by the government of a country for such license according to §6.25(d).

(c) Exceptions. (1) A licensee that fails in a quota year to enter at least 85 percent of the amount of an article permitted under a license shall not be eligible to receive a license for the same article from the same country for the next quota year. For the purpose of this paragraph, the

amount of an article permitted under the license will exclude any amounts surrendered pursuant to § 6.26(a), but will include any additional allocations received pursuant to §6.26(b).

(2) Paragraph (c)(1) of this section will not apply where the licensee demonstrates to the satisfaction of the Licensing Authority that the failure resulted from breach by a carrier of its contract of carriage, breach by a supplier of its contract to supply the article, act of God or force majeure.

(3) Paragraph (c)(1) of this section may not apply in the case of historical or nonhistorical licenses, where the licensee demonstrates to the satisfaction of the Licensing Authority that the country specified on the license maintains or permits an export monopoly to control the dairy articles concerned and the licensee petitions the Licensing Authority to waive this requirement. The licensee shall submit evidence that the country maintains an export monopoly as defined in this paragraph. For the purposes of this paragraph “export monopoly” means a privilege vested in one or more persons consisting of the exclusive right to carry on the exportation of any article of dairy products from a country to the United States.

(4) The Licensing Authority will not issue a nonhistorical license (Appendix 2) for an article from a country during a quota year to an applicant who is affiliated with another applicant to whom the Licensing Authority is issuing a non-historical license for the same article from the same country for that quota year. Further, the Licensing Authority will not issue a nonhistorical license for butter to an applicant who is affiliated with another applicant to whom the Licensing Authority is issuing a historical butter license of 57,000 kilograms or greater. For the purpose of this paragraph, an applicant will be deemed affiliated with another applicant if:

(i) The applicant is the spouse, brother, sister, parent, child or grandchild of such other applicant;

(ii) The applicant is the spouse, brother, sister, parent, child or grandchild of an individual who owns or controls such other applicant;

(iii) The applicant is owned or controlled by the spouse, brother, sister, parent, child or grandchild of an individual who owns or controls such other applicant.

(iv) Both applicants are 5 percent or more owned or directly or indirectly controlled, by the same person;

(v) The applicant, or a person who owns or controls the applicant, benefits from a trust that controls such other applicant.

(5) The Licensing Authority will not issue a nonhistorical license (Appendix 2) for an article from a country during a quota year to an applicant who is associated with another applicant to whom the Licensing Authority is issuing a nonhistorical license for the same article from the same country for that quota year. Further, the Licensing Authority will not issue a nonhistorical license for butter to an applicant who is associated with another applicant to whom the Licensing Authority is issuing a historical butter license for 57,000 kilograms or greater. For the purpose of this paragraph, an applicant will be deemed associated with another applicant if:

(i) The applicant is an employee of, or is controlled by an employee of, such other applicant;

(ii) The applicant manages or is managed by such other applicant, or economically benefits, directly or indirectly, from the use of the license issued to such other applicant.

(6) The Licensing Authority will not issue a nonhistorical license for an article from a country during a quota year, for which the applicant receives a designated license.

§ 6.24 Application for a license.

(a) Application for license shall be made on electronic forms designated for the purpose by the Licensing Authority. All parts of the application shall be completed. The application shall be transmitted no earlier than September 1 and no later than midnight October 15 of the year preceding that for which license application is made. The Licensing Authority will not accept incomplete applications.

(b)(1) Where the applicant seeks to establish eligibility on the basis of imports, applications shall include identification of entries sufficient to establish the applicant as the importer of record of entries required under § 6.23, during the 12-month period ending August 31 prior to the quota year for which license is being sought.

(2) Where the applicant seeks to establish eligibility on the basis of exports, applications shall include:

(i) Census Form 7525 or a copy of the electronic submission of such form, and

(ii) The commercial invoice or bill of sale for the quantities and number of export shipments required under § 6.23, during the 12-month period ending August 31 prior to the quota year for which license is being sought.

(c) An applicant requesting more than one nonhistorical license must rank order these requests by the applicable Additional U.S. Note number. Cheese and cheese products must be ranked separately from dairy articles other than cheese or cheese products.

§ 6.25 Allocation of licenses.

(a) Licensing Authority. The Licensing Authority will issue historical, nonhistorical and designated licenses.

(b) Historical licenses for the 2014 and subsequent quota years (Appendix 1). A person issued a historical license for the current quota year will be issued a historical license in the same amount for the same article from the same country for the next quota year except that beginning with the 2023 quota year, a person who has surrendered more than 50 percent of such historical license in at least three of the prior 5 quota years will thereafter be issued a license in an amount equal to the average annual quantity entered during those 5 quota years.

(c) Nonhistorical licenses (Appendix 2). The Licensing Authority will allocate nonhistorical licenses on the basis of a rank-order lottery system, which will operate as follows:

(1) The minimum license size shall be:

(i) Where the article is cheese or cheese product:

(A) The total amount available for nonhistorical license where such amount is less than 9,500 kilograms;

(B) 9,500 kilograms where the total amount available for nonhistorical license is between 9,500 kilograms and 500,000 kilograms, inclusive;

(C) 19,000 kilograms where the total amount available for nonhistorical license is between 500,001 kilograms and 1,000,000 kilograms, inclusive;

(D) 38,000 kilograms where the total amount available for nonhistorical license is greater than 1,000,000 kilograms; or

(E) An amount less than the minimum license size established in paragraphs (c)(1)(i) (A) through (D) of this section, if requested by the licensee;

(ii) Where the article is not cheese or cheese product:

(A) The total amount available for nonhistorical license where such amount is less than 19,000 kilograms;

(B) 19,000 kilograms where the total amount available for nonhistorical license is between 19,000 kilograms and 550,000 kilograms, inclusive;

(C) 38,000 kilograms where the total amount available for nonhistorical license is between 550,001 kilograms and 1,000,000 kilograms, inclusive; and

(D) 57,000 kilograms where the total amount available for nonhistorical license is greater than 1,000,000 kilograms;

(E) An amount less than the minimum license sizes established in paragraphs (c)(1)(i) (A) through (D) of this section, if requested by the licensee.

(2) Taking into account the order of preference expressed by each applicant, as required by § 6.24(c), the Licensing Authority will allocate licenses for an article from a country by a series of random draws. A license of minimum size will be issued to each applicant in the order established by such draws until the total amount of such article in Appendix 2 has been allocated. An applicant that receives a license for an article will be removed from the pool for subsequent draws until every applicant has been allocated at least one license, provided that the licenses for which they applied are not already fully allocated. Any amount remaining after the random draws which is less than the applicable minimum license size may, at the discretion of the Licensing Authority, be prorated equally among the licenses awarded for that article.

(d) Designated licenses (Appendix 3). (1) With respect to an article listed in Appendix 3, the government of the applicable country may, not later than October 31 prior to the beginning of a quota year, submit directly by email to the Licensing Authority:

- (i) The names, addresses and emails of the importers that it is designating to receive licenses; and
- (ii) The amount, in kilograms, of such article for which each such importer is being designated.

Where quantities for designation result from both Tokyo Round concessions and Uruguay Round concessions, the designations should be made in terms of each.

(2) To the extent practicable, the Licensing Authority will issue designated licenses to those importers, and in those amounts, indicated by the government of the applicable country, provided that the importer designated meets the eligibility requirements set forth in § 6.23. Consistent with the international obligations of the United States, the Licensing Authority may disregard a designation if the Licensing Authority determines that the person designated is not eligible for any of the reasons set forth in § 6.23(c)(1) or (2).

(3) If a government of a country which negotiated in the Uruguay Round for the right to designate importers has not done so, but determines to designate importers for the next quota year, it shall indicate its intention to do so directly and in writing to the Licensing Authority not later than July 1 prior to the beginning of such next quota year. Furthermore, if a government that has designated importers for a quota year determines that it will not continue to designate importers for the next quota year, it shall so indicate directly and in writing to the Licensing Authority, not later than July 1 prior to such next quota year.

§ 6.26 Surrender and reallocation.

(a) If a licensee determines that it will not enter the entire amount of an article permitted under its license, such licensee shall surrender its license right to enter the amount that it does not intend to enter. Surrender shall be made to the Licensing Authority no later than October 1. Any surrender shall be final and shall be only for that quota year, except as provided in §6.25(b). The amount of the license not surrendered shall be subject to the license use requirements of § 6.23(c)(1).

(b) For each quota year, the Licensing Authority will, to the extent practicable, reallocate any amounts surrendered.

(c) Any person who qualified for or was issued a cheese or cheese product license for a quota year may apply to receive additional license, or addition to an existing license for a portion of the amount being reallocated. A person who did not qualify for a cheese or cheese product license for a quota year, but qualified only for a license for articles other than cheese or cheese products, may only apply to receive an additional license for articles other than cheese or cheese products, or addition to an existing license for articles other than cheese or cheese products for a portion of the amount being reallocated. The application shall be submitted to the Licensing Authority no earlier than September 1 and not later than September 15, and shall specify:

(1) The name and control number of the applicant;

(2) The article and country being requested, the applicable HTS Additional U.S. Note number and, if more than one article is requested, a rank-order by Additional U.S. Note number; and

(3) If applicable, the number of the license issued to the applicant for that quota year permitting entry of the same article from the same country.

(d) The Licensing Authority will reallocate surrendered amounts among applicants as follows:

(1) The minimum license size, or addition to an existing license, will be the total amount of the article from a country surrendered, or 10,000 kilograms, whichever is less;

(2) Minimum size licenses, or additions to an existing license, will be allocated among applicants requesting articles on the basis of the rank-order lottery system described in § 6.25(c);

(3) If there is any amount of an article from a country left after minimum size licenses have been issued, the Licensing Authority may allocate the remainder in any manner it determines equitable among applicants who have requested that article; and

(4) No amount will be reallocated to a licensee who has surrendered a portion of its license for the same article from the same country during that quota year unless all other licensees applying for a reallocated quantity have been allocated a license;

(e) However, if the government of an exporting country chooses to designate eligible importers for surrendered amounts under Appendix 3, the Licensing Authority shall issue the licenses in accordance with § 6.25(d)(2), provided that the government of the exporting country notifies the Licensing Authority of its designations no later than September 1. Such notification shall contain the names and addresses of the importers that it is designating and the amount in percentage terms of such article for which each importer is being designated. In such case the requirements of paragraph (c) of this section shall not apply.

§ 6.27 Limitations on use of license.

(a) A licensee shall not obtain or use a license for speculation, brokering, or offering for sale, or permit any other person to use the license for profit.

(b) A licensee who is eligible as a manufacturer or processor, pursuant to § 6.23, shall process at least 75 percent of its licensed imports in such person's own facilities and maintain the records necessary to so substantiate.

§ 6.28 Transfer of license.

(a) If a licensee sells or conveys its business involving articles covered by this subpart to another person, including the complete transfer of the attendant assets, the Licensing Authority will transfer to such other person the historical, nonhistorical or designated license issued for that quota year. Such sale or conveyance must be unconditional, except that it may be in escrow with the sole condition for return of escrow being that the Licensing Authority determines that such sale does not meet the requirements of this paragraph.

(b) The parties seeking transfer of license shall give written notice to the Licensing Authority of the intended sale or conveyance described in paragraph (a) of this section by email. The notice must be received by the Licensing Authority at least 20 working days prior to the intended consummation of the sale or conveyance. Such written notice shall include copies of the documents of sale or conveyance. The Licensing Authority will review the documents for compliance with the requirements of paragraph (a) of this section and advise the parties in writing of its findings by the end of the 20-day period. The parties shall have the burden of demonstrating to the satisfaction of the Licensing Authority that the contemplated sale or conveyance complies with the requirements of paragraph (a) of this section. Within 15 days of the consummation of the sale or conveyance, the parties shall email the final documents to the Licensing Authority. The Licensing Authority will not transfer the licenses unless the documents are submitted in accordance with this paragraph.

(c) The eligibility for a license of a person to whom a business is sold or conveyed will be determined for the next quota year in accordance with § 6.23. For the purposes of § 6.23(b)(1) the person to whom a business is sold or conveyed shall be deemed to be the person to whom the historical licenses were issued during the quota year in which the sale or conveyance occurred. Further, for the purposes of § 6.23(b) and (c), the entries made under such licenses by the original licensee during the year in which the sale of conveyance is made, shall be considered as having been made by the person to whom the business was sold or conveyed.

§ 6.29 Use of licenses.

(a) An article entered under a license shall be an article produced in the country specified on the license.

(b) An article entered or withdrawn from warehouse for consumption under a license must be entered in the name of the licensee as the importer of record by the licensee or its agent, and must be owned by the licensee at the time of such entry.

(c) If the article entered or withdrawn from warehouse for consumption was purchased by the licensee through a direct sale from a foreign supplier, the licensee shall present, at the time of entry:

(1) A true and correct copy of a through bill of lading from the country; and

(2) A commercial invoice or bill of sale from the seller, showing the quantity and value of the product, the date of purchase and the country; or

(3) Where the article was entered into warehouse by the foreign supplier, CBP Form 7501 endorsed by the foreign supplier, and the commercial invoice.

(d) If the article entered was purchased by the licensee via sale-in-transit, the licensee shall present, at the time of entry:

(1) A true and correct copy of a through bill of lading endorsed by the original consignee of the goods;

(2) A certified copy of the commercial invoice or bill of sale from the foreign supplier to the original consignee of the goods; and

(3) A commercial invoice or bill of sale from the original consignee to the licensee.

(e) If the article entered was purchased by the licensee in warehouse, the licensee shall present, at the time of entry:

(1) CBP Form 7501 endorsed by the original consignee of the goods;

(2) A certified copy of the commercial invoice or bill of sale from the foreign supplier to the original consignee of the goods; and

(3) A commercial invoice or bill of sale from the original consignee to the licensee.

(f) The Licensing Authority may waive the requirements of paragraphs (c), (d) or (e), if it determines that because of strikes, lockouts or other unusual circumstances, compliance with those requirements would unduly interfere with the entry of such articles.

(g) Nothing in this subpart shall prevent the use of immediate delivery in accordance with the provisions of CBP regulations relating to tariff-rate quotas.

§ 6.30 Record maintenance and inspection.

A licensee shall retain all records relating to its purchases, sales and transactions governed by this subpart, including all records necessary to establish the licensee's eligibility, for five years subsequent to the end of the quota year in which such purchases, sales or transactions occurred. During that period, the licensee shall, upon reasonable notice and during ordinary hours of business, grant officials of the U.S. Department of Agriculture full and complete access to the licensee's premises to inspect, audit or copy such records.

§ 6.31 Debarment and suspension.

The provisions in 7 CFR part 3017—Governmentwide Debarment and Suspension (Nonprocurement) and Government Requirements for Drug-Free Workplace (Grants), subparts A through E, apply to this subpart.

§ 6.32 Globalization of licenses.

If the Licensing Authority determines that entries of an article from a country are likely to fall short of that country's allocated amount as indicated in appendices 1, 2, and 3, the Licensing Authority may permit, with the approval of the Office of the United States Trade Representative, the applicable licensees to enter the remaining balance or a portion thereof from any country during that quota year. Requests for consideration of such adjustments must be submitted to the Licensing Authority no later than September 1. The Licensing Authority will obtain prior consent for such an adjustment of licenses from the government of the exporting country for quantities in accordance with the Uruguay Round commitment of the United States. No globalization requests will be considered prior to April 1 of each year.

§ 6.33 License fee.

(a) A fee will be assessed each quota year for each license to defray the Department's costs of administering the licensing system. To the extent practicable, the fee will be announced by the Licensing Authority in a notice published in the Federal Register no later than August 31 of the year preceding the quota year for which the fee is assessed.

(b) The license fee for each license issued is due and payable in full no later than March 15 of the year for which the license is issued. The fee for any license issued after March 15 of any quota year is due and payable in full no later than 10 days from the date of issuance of the license. Fee payments are payable to the Treasurer of the United States and shall be made utilizing the electronic software designated for the purpose by the Licensing Authority as provided in § 6.36(b).

(c) If the license fees for all licenses issued to a licensee are not paid by the final payment date, a hold will be placed on the use of all licenses issued to the licensee and no articles will be permitted entry under those licenses. The Licensing Authority shall send a warning letter by email advising the licensee that if payment is not made in accordance with § 6.36(b) and received within 10 calendar days from the date of the email, all licenses issued to that licensee will be revoked. Where the license at issue is a historical license, this will result, pursuant to § 6.23(b), in the person's loss of historical eligibility for such license.

§ 6.34 Adjustment of appendices.

(a) Whenever a historical license (Appendix 1) is not issued to an applicant pursuant to the provisions of § 6.23, is permanently surrendered or is revoked by the Licensing Authority, the amount of such license will be transferred to Appendix 2.

(b) The cumulative annual transfers to Appendix 2 made in accordance with paragraph (a) will be published in the Federal Register. If a transfer results in the addition of a new article, or an article from a country not previously listed in Appendix 2, the Licensing Authority shall afford all eligible applicants for that quota year the opportunity to apply for a license for such article.

§ 6.35 Correction of errors.

(a) If a person demonstrates, to the satisfaction of the Licensing Authority, that errors were made by officers or employees of the United States Government, the Licensing Authority will review and rectify the errors to the extent permitted under this subpart.

(b) To be considered, a person must provide sufficient documentation regarding the error to the Licensing Authority by email, not later than August 31 of the calendar year following the calendar year in which the error was alleged to have been committed.

(c) If the error resulted in the loss of a historical license by a license holder, the Licensing Authority will transfer the amount of such license from Appendix 2 to Appendix 1 in order to provide for the issuance of such license in the calendar year following the calendar year for which the license was revoked. The cumulative annual transfers to Appendix 1 in accordance with this paragraph will be published in the Federal Register.

§ 6.36 Miscellaneous.

(a) If any deadline date in this subpart falls on a Saturday, Sunday, or a Federal holiday, then the deadline shall be the next business day.

(b) All applications and fee payments required under this subpart shall be made utilizing the electronic software designated for this purpose by the Licensing Authority, and official

correspondence with the Licensing Authority, except as provided under § 6.28(b), shall be by email.

§ 6.37 [Removed]

4. Section 6. 37 is removed.

Dated: August 21, 2014.

Philip C. Karsting,
Administrator,
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